

HB 483

	MFSA	MEPA/NEPA	Individual Permits	BER Appeals
When?	Upon initiation of proposed project. (Not always required).	During or immediately after completion of MFSA application, or upon initiation of proposed project.	After issuance of a FONSI or ROD, and upon completion of enough design to adequately calculate impacts.	After issuance of a permit.
What?	Environmental overview of potential impacts.	Detailed analysis of proposed impacts and mitigation. This procedural effort is intended to be open and objective, and foster good decision-making.	Detailed application identifying impacts and mitigation commitments. These may include air quality, water quality, stream crossing, etc. permits.	No formal requirement for form or substance of an appeal. (General guidance provided in MCA 2.4.6 contested case procedures).
Defined Criteria?	Well explained in DEQ's MFSA Circulars.	Well defined criteria, and based on sound scientific analysis, and professionally accepted practice.	Well defined, and based on studies conducted as part of the MFSA and/or MEPA/NEPA process.	No established criteria for scope or limits of an appeal.
Level of Public Involvement?	One or more public meetings required, and application to include "... assessment of public attitudes and concerns about the potential impacts, based on representative views of persons residing in the impact zone ..." Often includes individual interviews, surveys, and local informational meetings.	Extensive. Includes formal scoping, 30 to 45 day comment period on the EA or EIS and Public Hearing at a minimum, but more often includes public informational meetings, workshops, individual interest group meetings, information on web-pages, project newsletters, and presentations to local civic organizations.	A minimum 15-day public review of the application before it is issued.	No defined process to solicit input from project proponents or opponents during the appeals process.
Defined End?	Yes, with issuance of Certificate of Compliance.	Yes, with issuance of FONSI or ROD.	Yes, with issuance of permit.	No. The potential for continual and unsubstantiated appeals is limitless, and may ultimately result in litigation.



Focus of HB 483

The Case for Appeals and Litigation reform:

According to DEQ, there have been 6 major energy projects over the last 8 years or so. Notice that all 6 were appealed, some multiple times. Notice that the level of "gaming" of permits, i.e. appealing and litigation has substantially increased in the later projects. Two were appealed and litigated to Supreme Court. One was broken. Appeals were even filed in the last case on the BACT after it was changed in the favor of the appellant.

Appeals of Energy Generation Facility Air Quality Permits

1. Rocky Mountain Power (Hardin plant)--Appealed to Board. Settled.
2. Continental Energy (proposed Butte plant)--Appealed to district court. Judgment for Department. Not appealed.
3. Northwestern Energy (proposed Great Falls plant)--Appeal to Board. Settled.
4. Roundup Power--3 appeals to Board and one court challenge. Board held for Department in one, which was appealed district court. District court held for Department. Petitioners appealed to Supreme Court. Supreme Court held in part for petitioners and in part for Department. Board held for petitioners in another case. Third appeal to Board dismissed as moot. In court challenge district court held for Department. Petitioners appealed to Supreme Court. Supreme Court dismissed as moot.
5. Thompson River Co-Gen (proposed Thompson Falls plant)--Appeal to Board. Board held in part for Department, in part for petitioners. Ruling in favor of Department appealed to district court. District court upheld Department. Petitioners have appealed to Supreme Court.
6. Southern Montana Electric (proposed Great Falls plant)--Appeal to Board. Ruling in part for petitioners and in part for Department. Ruling for Department appealed to district court. Ruling for petitioners resulted in Department doing a new BACT determination. New BACT determination appealed to Board.

Here's how one prominent environmental activist characterized his organization's approach to this issue in an interview with the Associated Press this in January 2008: *"Our goal is to oppose these [baseload coal] projects at each and every stage, from zoning and air and water permits, to their mining permits and new coal railroads," said Bruce Nilles, a Sierra Club attorney who directs the group's national coal campaign. Nilles said the Sierra Club spent about \$1 million on such efforts in 2007 and hopes to ratchet that figure up to \$10 million this year."*

Is there need for more energy?

The U.S. faces potentially crippling electricity brownouts and blackouts beginning in the summer of 2009, which may cost tens of billions of dollars and threaten lives. Unless major investments are made immediately in both electricity generation (power plants) and transmission (power lines), the threat of service interruptions will increase.

Source: The NextGen Energy Council, Management Information Services, Inc. 9/08

A 2008 U.S. Department of Agriculture study, Rural Electric Power Generation and Capacity Expansion, came to similar conclusions. It found that rural electric cooperatives, which serve primarily rural areas, *"are forecasting the need to build new baseload capacity to meet the requirements of their customer" and "need to double generation capacity by 2020."* It goes on to say that *"due to the significant lead time necessary for the addition of new baseload capacity, many utilities, including cooperatives, are behind the curve."* Compounding the need for more generation, the report noted that *"the existing transmission grid is operating at capacity and many parts of the grid are operating beyond expected life cycles. The lack of transmission capacity is also impeding the development of renewable energy resources in remote rural areas."*

Source: <http://www.rurdev.usda.gov/rd/farmbill/08/GenInfo/ElectricPowerGenerationReport.pdf>

Why cant we build it ?

Major impediments to strengthening the nation's electricity infrastructure and maintaining grid reliability identified by The NextGen Energy Council, Management Information Services, Inc. 9/08 are:

- 1) Lawsuits by environmental groups against power plants, transmission lines and natural gas production;*
- 2) Regulatory uncertainty tied to federal and state climate change policies;*

Of these impediments, Nexgen identified *the single biggest threat to system reliability is opposition from well-funded environmental groups that oppose and file lawsuits against virtually every new electricity project proposed.*

http://www.nextgenenergy.org/Portals/NextGen/studies/Nextgen_Lights_Out_Study.pdf

Some key local Montana examples:

Great Northern Power Development owns the largest collection of coal reserves in Northern America beside the U.S. federal government with significant Montana Resources. The company had to decide between two project sites, which one they would move forward with first...One in South Heart, N.D. or one in Circle, MT. The Company decided to first focus on the site in North Dakota. *"If all the factors were the same, though, we would have still chosen North Dakota," "The reason for this is that business and regulations are more hospitable in North Dakota and this has primarily to do with the permitting process."*

Source: <http://www.neo-natura.com/2008/06/environment-permit-regulations.html>

Jeff Schaeff, an engineer with Bison Engineering, explained that the MEPA allows organizations who oppose the building of the facility more time and more opportunities

to appeal and stall the process through litigation than in other states. *"They [the opposing organizations] know very well how to work with the laws and take advantage of them,"* Schaeff said, *"Conceptually it's a good idea, but the process gets exploited by the opposition."*

Governor Brian Schweitzer, as he pursued a vision of energy development ran into a permit problem trying to help a CTL plant startup. A Montana Department of Environmental Quality (DEQ) hearings examiner ruled that the state had improperly extended the company's air quality permit after the original permit had expired. **Because of the permit slipup the investors backed out since it would have taken more than 18 months to start construction.** The CTL plant planned to **have all of its CO2 emissions sequestered** into underground caverns and unused oil fields around Montana.

Source: <http://www.ueo-natura.com/2008/06/environment-permit-regulations.html>

Judge for yourself the tone of the key architect behind most of the appeals and litigation in Montana as posted on their (MEIC) website:

It's official—the Roundup Power Project will not be built. It's not everyday that you can say you helped stop a 780-megawatt coal-fired power plant...

MEIC had to file a total of four legal challenges to the plant: two regarding the emissions of nonhazardous and hazardous air pollutants, and one involving the State's compliance with the Montana Environmental Policy Act and failure to protect Montanans' constitutional right to a clean and healthful environment. Finally, MEIC had to bring an administrative appeal to force the revocation of the permit.

Highwood Generating Station

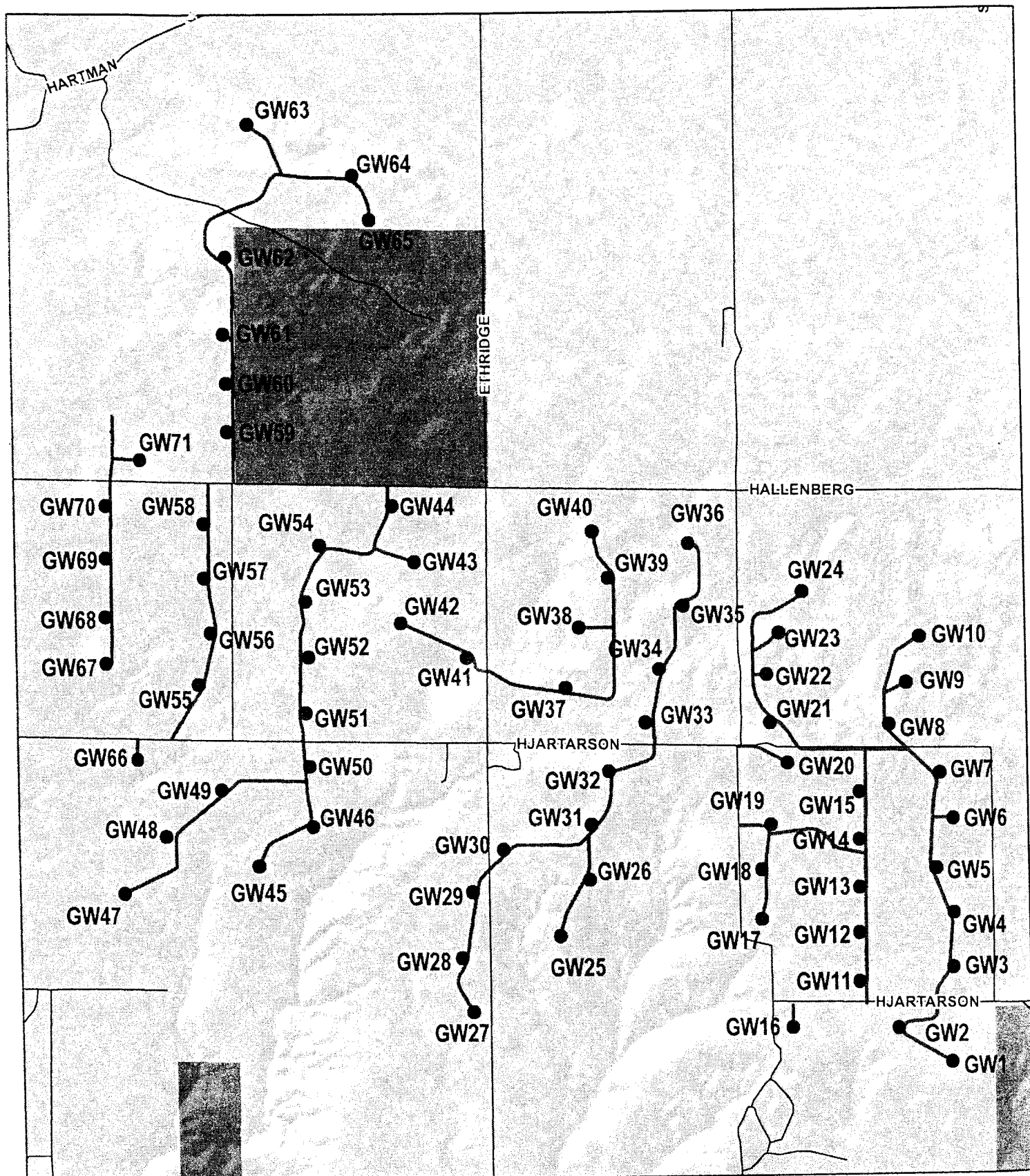
BREAKING NEWS!!!!!!!

- *Southern Montana Electric Generation and Transmission has **scrapped plans** to build a \$950-million coal-fired power plant east of Great Falls*

WHY? (Checkout the site, this is a limited list)

- *MEIC Files Suit over Highwood's Carbon Dioxide Emissions*
- *Yellowstone Valley Electric Co-op Kicked Out of Highwood Project*
- *MEIC Wins Landmark Air Pollution Victory against Highwood*
- *MEIC and Farmers Sue Cascade County for Illegal Spot Zoning—Again*

It seems there is much celebration of the ability to use appeals and litigation as tools to destroy jobs, reduce school funding, and stand in the road of cheaper electricity.



Constructed Layout **Glacier Wind I**

For illustrative purposes only.

0 0.25 0.5 1 Miles

0 0.5 1 1.5 2 km

Data Source: USGS. UTM Zone 12 North, NAD83 - Created by HD. 090210. C:\IGW_Phase_I_State_Land_8_5x11_090210.mxd

Legend

- Wind Turbine
- Project Road
- County Road
- State Land

